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**IN THE UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

ADRIAN BACON, individually and
 on behalf of all others similarly
 situated,

Plaintiff,
 vs.

ARTIFICIAL GRASS
 LIQUIDATORS LOCATION 1, INC.;
 and DOES 1 through 10, inclusive,
 and each of them,

Defendant.

) Case No.:

)

) **CLASS ACTION**

)

) **COMPLAINT FOR VIOLATIONS**

) **OF:**

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) (1) Violations of the Telephone
 Consumer Protection Act, 47
 U.S.C. § 227, et seq. (Text
 Messages)

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DEMAND FOR JURY TRIAL

1 Plaintiff ADRIAN BACON (“Plaintiff” or “Bacon”), individually and on
 2 behalf of all other persons similarly situated, alleges the following upon
 3 information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action for himself and others similarly situated
 6 seeking damages and any other available legal or equitable remedies resulting
 7 from the illegal actions of defendants ARTIFICIAL GRASS LIQUIDATORS
 8 LOCATION 1, INC. (“Defendant” or “Artificial Grass”) and DOES 1 through 50
 9 (collectively referred to throughout portions of this Class Action Complaint as
 10 “Defendants”), in contacting Plaintiff as well as knowingly, and/or willfully
 11 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone
 12 Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), thereby invading
 13 Plaintiff’s privacy.

14 2. Defendant is a synthetic turf company. In an effort to solicit potential
 15 customers, Artificial Grass recruited, or employed agents to use machines that had
 16 the capacity to store a list of phone numbers and send out blast texts to cellular
 17 telephone calls, *en masse*, to consumers across the country. On information and
 18 belief, Defendants and or its agents purchase “leads” containing consumers’
 19 contact information and create electronic databases from which Defendants makes
 20 automated calls.

21 3. Defendants conducted wide scale telemarketing campaigns and
 22 repeatedly made contact with consumers’ telephones—whose numbers appear on
 23 the National Do Not Call Registry—without consent, all in violation of the
 24 Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”).

25 4. The Telephone Consumer Protection Act, 47 U.S.C. § 227 (the
 26 “TCPA”) was enacted to protect consumers from unsolicited telephone contact
 27 exactly like those alleged in this case. In response to Defendant’s unlawful
 28 conduct, Plaintiff files the instant lawsuit and seek an injunction requiring

1 Defendant to cease all unsolicited telephone contacting activities and an award of
2 statutory damages to the members of the Class under the TCPA up to \$500.00 per
3 violation, together with court costs, reasonable attorneys' fees, and up to three
4 times actual monetary loss damages (for knowing and/or willful violations).

5 5. This case arises from the transmissions of text messages to the
6 cellular telephones of Plaintiff and members of the class for the purpose of
7 promoting Defendant's services.

8 6. By sending the illegal texts at issue in this Complaint, Defendants
9 caused Plaintiff and the members of a putative Class of consumers (defined
10 below) actual harm, including the aggravation, nuisance, and invasion of privacy
11 that necessarily accompanies the receipt of unsolicited and harassing text
12 messages, as well as the monies paid to their carriers for the receipt of such text
13 messages.

14 7. Plaintiff brings this class action against Defendant to secure redress
15 because Defendant willfully violated the TELEPHONE CONSUMER PROTECTION ACT
16 ("TCPA"), 47 U.S.C § 227, *et seq.* by sending text messages to Plaintiff and other
17 class members' telephones.

18 8. The TCPA was enacted to protect consumers from unsolicited text
19 messages exactly like those alleged in this case. In response to Artificial Grass's
20 unlawful conduct, Plaintiff files the instant lawsuit and seeks an injunction
21 requiring Artificial Grass to halt its illegal conduct, including to cease all
22 unsolicited text messaging activities, which has resulted in the invasion of
23 privacy, harassment, aggravation, and disruption of the daily life of thousands of
24 individuals nationwide. Plaintiff also seeks statutory damages on behalf of
25 himself and members of the class, and any other available legal or equitable
26 remedies resulting from the illegal actions of Defendant.

PARTIES

9. Plaintiff ADRIAN BACON is a natural person and citizen in the county of Orange, California.

10. Defendant ARTIFICIAL GRASS LIQUIDATORS (“Defendant” or “Artificial Grass”) is California company with its principal place of business at 28071 Diaz Road, Suite A, Temecula, California 92590. Defendant may be served with process by serving its registered agent, Dillion Eric Georgian at 28071 Diaz Road, Suite A, Temecula, California 92590.

11. Plaintiff does not yet know the identity of Defendant’s employees/agents that had direct, personal participation in or personally authorized the conduct found to have violated the statute and were not merely tangentially involved. They will be named, as numerous District Courts have found that individual officers/principals of corporate entities may be personally liable (jointly and severally) under the TCPA if they had direct, personal participation in or personally authorized the conduct found to have violated the statute, and were not merely tangentially involved. *Texas v. American Blastfax, Inc.*, 164 F.Supp.2d 892, 899 (W.D. Tex. 2001) (“*American Blastfax*”); *Sandusky Wellness Center, LLC v. Wagner Wellness, Inc.*, 2014 WL 1333472, at * 3 (N.D. Ohio March 28, 2014); *Maryland v. Universal Elections*, 787 F.Supp.2d 408, 415-16 (D.Md. 2011) (“*Universal Elections*”); *Baltimore-Washington Tel Co. v. Hot Leads Co.*, 584 F.Supp.2d 736, 745 (D.Md. 2008); *Covington & Burling v. Int’l Mktg. & Research, Inc.*, 2003 WL 21384825, at *6 (D.C.Super Apr. 17, 2003); *Chapman v. Wagener Equities, Inc.* 2014 WL 540250, at *16-17 (N.D.Ill. Feb. 11, 2014); *Versteeg v. Bennett, Deloney & Noyes, P.C.*, 775 F.Supp.2d 1316, 1321 (D.Wy.2011) (“*Versteeg*”). Upon learning of the identities of said individuals, Plaintiff will move to amend to name the individuals as defendants. Artificial Grass and the yet to be identified DOES are collectively referred to herein as “Defendants”)

12. Defendant Artificial Grass has at least 6 different entities registered as location 1-6 respectively.

13. Whenever in this complaint it is alleged that Defendant(s) committed any act or omission, it is meant that the Defendant's officers, directors, vice-principals, agents, servants, or employees, subsidiaries, or affiliates committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Defendant or was done in the routine normal course and scope of employment of the Defendant's officers, directors, vice-principals, agents, servants, or employees.

JURISDICTION & VENUE

14. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the TCPA, which is a federal statute.

15. The Court has personal jurisdiction over Defendant because they conduct significant business in this District, and the unlawful conduct alleged in this Complaint occurred in, was directed to, and/or emanated from this District. It is also the District were Artificial Grass located its principal place of business.

16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the wrongful conduct giving rise to this case occurred in, was directed to, and/or emanated from this District.

17. Defendants are subject to specific personal jurisdiction in this District because they have continuous and systematic contacts with this District through their telemarketing efforts that target this District, and the exercise of personal jurisdiction over Defendants in this District does not offend traditional notions of fair play or substantial justice.

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LEGAL BASIS FOR THE CLAIMS

18. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In doing so, Congress recognized that “[u]nrestricted telemarketing...can be an intrusive invasion of privacy...” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243 § 2(5) (1991) (codified at 47 U.S.C. § 227).

19. Specifically, the TCPA restricts telephone solicitations (*i.e.*, telemarketing) and the use of automated telephone equipment. The TCPA limits the use of automatic dialing systems, artificial or prerecorded voice messages, SMS text messages, and fax machines. It also specifies several technical requirements for fax machines, autodialers, and voice messaging systems—principally with provisions requiring identification and contact information of the entity using the device to be contained in the message.

20. In its initial implementation of the TCPA rules, the FCC included an exemption to its consent requirement for prerecorded telemarketing calls. Where the caller could demonstrate an “established business relationship” with a customer, the TCPA permitted the caller to place pre-recorded telemarketing calls to residential lines. The new amendments to the TCPA, effective October 16, 2013, eliminate this established business relationship exemption. Therefore, all pre-recorded telemarketing calls to residential lines and wireless numbers violate the TCPA if the calling party does not first obtain express written consent from the called party.

21. As of October 16, 2013, unless the recipient has given prior express written consent,¹ the TCPA and Federal Communications Commission (FCC) rules under the TCPA generally:

¹ Prior express written consent means “an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered. 47 C.F.R. § 64.1200(f)(8).



- Prohibits solicitors from calling residences before 8 a.m. or after 9 p.m., local time.
- Requires solicitors provide their name, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which that person or entity may be contacted.
- Prohibits solicitations to residences that use an artificial voice or a recording.
- Prohibits any call or text made using automated telephone equipment or an artificial or prerecorded voice to a wireless device or telephone.
- Prohibits any call made using automated telephone equipment or an artificial or prerecorded voice to an emergency line (e.g., “911”), a hospital emergency number, a physician’s office, a hospital/health care facility/elderly room, a telephone, or any service for which the recipient is charged for the call.
- Prohibits autodialed calls that engage two or more lines of a multi-line business.
- Prohibits unsolicited advertising faxes.
- Prohibits certain calls to members of the Do-Not-Call Registry

22. The TCPA prohibits: (1) any person from calling a cellular telephone number; (2) using an automatic telephone dialing system or prerecorded message; (3) without the recipient’s prior express consent. 47 U.S.C. § 227(b)(1)(A).

23. The TCPA defines an “automatic telephone dialing system” (“ATDS”) as “equipment that has the capacity - (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1).

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24. In an action under the TCPA, a plaintiff must only show that the defendant “called a number assigned to a cellular telephone service using an automatic dialing system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).

25. The Federal Communications Commission (“FCC”) is empowered to issue rules and regulations implementing the TCPA. According to the FCC’s findings, calls in violation of the TCPA are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

26. There are just a handful of elements need to be proven for violations of the Do Not Call provision of the TCPA.

A. DO NOT CALL VIOLATIONS OF THE TCPA

27. More Than One Call within Any 12 Month Period. 47 U.S.C. § 227(c) provides that any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.

28. Calls to Residential Lines on the Do Not Call List. The TCPA’s implementing regulation—47 C.F.R. § 64.1200(c)—provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-

1 call registry of persons who do not wish to receive telephone solicitations that is
2 maintained by the federal government.” *See* 47 C.F.R. § 64.1200(c).

3 29. Or, Wireless Lines on the Do Not Call List. Owners of wireless
4 telephone numbers (aka mobile or cellular phones) receive the same protections
5 from the Do Not Call provision as owners or subscribers of wireline (“landline”)
6 phone numbers. 47 C.F.R. § 64.1200(e), provides that 47 C.F.R. §§ 64.1200(c)
7 and (d) “are applicable to any person or entity making telephone solicitations or
8 telemarketing calls to wireless telephone numbers to the extent described in the
9 Commission’s Report and Order, CG Docket No. 02-278, FCC 03-153, ‘Rules
10 and Regulations Implementing the Telephone Consumer Protection Act of
11 1991,’” which the Report and Order, in turn, provides as follows:

12 The Commission’s rules provide that companies making telephone
13 solicitations to residential telephone subscribers must comply with
14 time of day restrictions and must institute procedures for maintaining
15 do-not-call lists. For the reasons described above, we conclude that
16 these rules apply to calls made to wireless telephone numbers. We
17 believe that wireless subscribers should be afforded the same
18 protections as wireline subscribers.

19 30. The Affirmative Defense of Prior Express Consent. The Ninth Circuit
20 has defined “express consent” to mean “clearly and unmistakably stated.”
21 *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 955 (9th Cir. 2009)
22 (“*Satterfield*”). “Prior express consent is an affirmative defense for which the
23 defendant bears the burden of proof.” *See Grant v. Capital Management Services,*
24 *L.P.*, 2011 WL 3874877, at *1, n.1. (9th Cir. Sept. 2, 2011) (“express consent is not
25 an element of a TCPA plaintiff’s prima facie case, but rather is an affirmative
26 defense for which the defendant bears the burden of proof”); see also *Robbins v.*
27 *Coca-Cola Company*, No. 13-cv-132, 2013 WL 2252646, at *2 (S.D. Cal. May 22,
28 2013).

31. Telemarketers Must Maintain a List of Persons Requesting Not to
Receive Calls. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity

1 shall initiate any call for telemarketing purposes to a residential telephone
2 subscriber unless such person or entity has instituted procedures for maintaining a
3 list of persons who request not to receive telemarketing calls made by or on behalf
4 of that person or entity.” The procedures instituted must meet the following
5 minimum standards:

6
7 (1) Written policy. Persons or entities making calls for telemarketing
8 purposes must have a written policy, available upon demand, for
9 maintaining a do-not-call list.

10 (2) Training of personnel engaged in telemarketing. Personnel
11 engaged in any aspect of telemarketing must be informed and trained
12 in the existence and use of the do-not-call list.

13 (3) Recording, disclosure of do-not-call requests. If a person or entity
14 making a call for telemarketing purposes (or on whose behalf such a
15 call is made) receives a request from a residential telephone
16 subscriber not to receive calls from that person or entity, the person
17 or entity must record the request and place the subscriber’s name, if
18 provided, and telephone number on the do-not-call list at the time the
19 request is made. Persons or entities making calls for telemarketing
20 purposes (or on whose behalf such calls are made) must honor a
21 residential subscriber’s do-not-call request within a reasonable time
22 from the date such request is made. This period may not exceed
23 thirty days from the date of such request...

24 (4) Identification of sellers and telemarketers. A person or entity
25 making a call for telemarketing purposes must provide the called
26 party with the name of the individual caller, the name of the person
27 or entity on whose behalf the call is being made, and a telephone
28 number or address at which the person or entity may be contacted.
The telephone number provided may not be a 900 number or any
other number for which charges exceed local or long distance
transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request
by the subscriber to the contrary, a residential subscriber’s do-not-
call request shall apply to the particular business entity making the
call (or on whose behalf a call is made) and will not apply to

1 affiliated entities unless the consumer reasonably would expect them
2 to be included given the identification of the caller and the product
being advertised.

3 (6) Maintenance of do-not-call lists. A person or entity making calls
4 for telemarketing purposes must maintain a record of a consumer's
5 request not to receive further telemarketing calls. A do-not-call
6 request must be honored for 5 years from the time the request is
made.

7 **COMMON FACTUAL ALLEGATIONS**

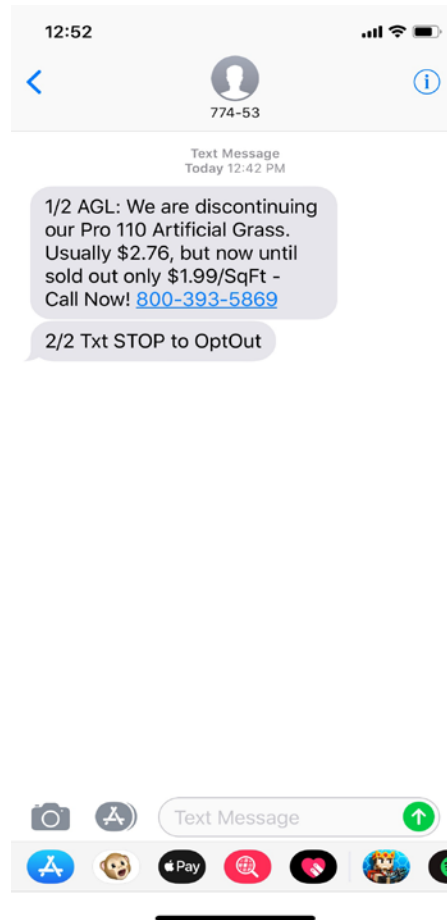
8 32. Defendant Artificial Grass Liquidators is a synthetic turf company.
9 The Defendant has engaged in a scheme, to place text messages, *en masse*, to
10 consumers across the country. On information and belief, Defendants and or their
11 agents purchase "leads" containing consumers' contact information and create
12 electronic databases from which Defendants makes automated text messages that
13 are not hand delivered.

14 33. In Defendant's overzealous attempt to market its products, Defendant
15 placed repeated and unwanted texts to consumers whose phone numbers are listed
16 on the National Do Not Call Registry. Consumers place their phone numbers on
17 the Do Not Call Registry for the express purpose of avoiding unwanted
18 telemarketing calls like those alleged here.

19 34. Defendants knowingly made these telemarketing text messages
20 without the prior express written consent of the recipients, and knowingly
21 continue to message them after requests to stop. As such, Defendants not only
22 invaded the personal privacy of Plaintiff and members of the putative Class, but
23 also intentionally and repeatedly violated the TCPA.

24 **FACTS SPECIFIC TO PLAINTIFF ADRIAN BACON**

25 35. On or about July 5, 2018, Defendants using an automated text-
26 messaging platform, caused the following text message to be transmitted to
27 Plaintiff's cellular telephone:
28



36. The message was sent from the number 774-53, a five digit SMS number, which is a dedicated short code number used for mass texts, not hand delivered messages.

37. Defendant's text message constitutes telemarketing because it promotes Defendant's goods and/or services, including its "Pro 110 Artificial Grass."

38. At no point in time did Plaintiff provide Defendants with his express written consent to be contacted by text messages using an ATDS.

39. At no point in time did Plaintiff provide Defendant with his express consent or express permission to be contacted by text messages using an ATDS

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1 40. At no point in time did Plaintiff provide Artificial Grass Liquidators
2 with his express written consent to be contacted by text messages using an ATDS.

3 41. Plaintiff is the subscriber and/or sole user of the cellular telephone, at
4 (714) 328-****.

5 42. Upon information and belief, Defendant caused the same or similar
6 text messages to be transmitted to the cellular telephones of consumers
7 throughout the country.

8 43. The impersonal and generic nature of Defendant's text message
9 establishes that Defendant utilized an ATDS in transmitting the messages. *See*
10 *Jenkins v. LL Atlanta, LLC*, No. 1:14-cv-2791-WSD, 2016 U.S. Dist. LEXIS
11 30051, at *11 (N.D. Ga. Mar. 9, 2016) ("These assertions, combined with the
12 generic, impersonal nature of the text message advertisements and the use of a
13 short code, support an inference that the text messages were sent using an
14 ATDS.") (citing *Legg v. Voice Media Grp., Inc.*, 20 F. Supp. 3d 1370, 1354 (S.D.
15 Fla. 2014) (plaintiff alleged facts sufficient to infer text messages were sent using
16 ATDS; use of a short code and volume of mass messaging alleged would be
17 impractical without use of an ATDS); *Kramer v. Autobyte, Inc.*, 759 F. Supp. 2d
18 1165, 1171 (N.D. Cal. 2010) (finding it "plausible" that defendants used an ATDS
19 where messages were advertisements written in an impersonal manner and sent
20 from short code); *Robbins v. Coca-Cola Co.*, No. 13-CV-132-IEG NLS, 2013
21 U.S. Dist. LEXIS 72725, 2013 WL 2252646, at *3 (S.D. Cal. May 22, 2013)
22 (observing that mass messaging would be impracticable without use of an
23 ATDS)).

24 44. Defendant utilized a combination of hardware and software systems
25 to send the text messages at issue in this case. The systems utilized by Defendant
26 have the current capacity or present ability to store numbers using a random or
27 sequential generator, and to dial such numbers. Additionally, the equipment used
28 by Defendant has the capacity to dial numbers from a list of numbers,

1 automatically without human intervention.

2 45. Defendants knowingly made these telemarketing text messages
3 without the prior express written consent of the recipients, and knowingly
4 continue to text them after requests to stop. As such, Defendants not only invaded
5 the personal privacy of Plaintiff and members of the putative Class, but also
6 intentionally and repeatedly violated the TCPA.

7 46. Defendants' calls/texts constituted calls that were not for emergency
8 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

9 47. Defendants' unsolicited telemarketing calls/texts caused Plaintiff
10 extreme aggravation and occupied his telephone line.

11 48. Plaintiff has reason to believe Defendant texted thousands of
12 telephone customers to market their products and services.

13 49. Plaintiff's overriding interest is ensuring Defendants cease all illegal
14 telemarketing practices and compensates all members of the Plaintiff Class for
15 invading their privacy in the manner the TCPA was contemplated to prevent.

16 50. In order to redress injuries caused by Defendant's violations of the
17 TCPA, Plaintiff, on behalf of himself and a class of similarly situated individuals,
18 bring suit under the TCPA, 47 U.S.C. § 227, *et seq.*, which prohibits certain
19 unsolicited calls voice and text to individuals whose numbers are registered on the
20 Do Not Call Registry as well as illegal text messages to anyone cellphones.

21 51. On behalf of the Class, Plaintiff seeks an injunction requiring
22 Defendants to cease all illegal telemarketing and spam activities and an award of
23 statutory damages to the class numbers, together with costs and reasonable
24 attorneys' fees.

25 **STANDING**

26 52. Plaintiff has standing to bring this suit on behalf of himself and the
27 members of the class under Article III of the United States Constitution because
28 Plaintiff's claims state: (a) a valid injury in fact; (b) an injury which is traceable to

1 the conduct of Defendant; and (c) is likely to be redressed by a favorable judicial
 2 decision. *See Spokeo v. Robins*, 578 U.S. ___ (2016) at 6; *Lujan v. Defenders of*
 3 *Wildlife*, 504 U.S. 555, 560 (1992).

4 **A. INJURY IN FACT**

5 53. Plaintiff has standing to bring this suit on behalf of himself and the
 6 members of the class under Article III of the United States Constitution because
 7 Plaintiff's claims state: (a) a valid injury in fact; (b) an injury which is traceable to
 8 the conduct of Defendant; and (c) is likely to be redressed by a favorable judicial
 9 decision. *See Spokeo v. Robins*, 578 U.S. ___ (2016) at 6; *Robins v. Spokeo*, 867
 10 F.3d 1108 (9th Cir. 2017) (cert denied. 2018 WL 491554, U.S., Jan. 22 2018);
 11 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); and *Chen v. Allstate*
 12 *Inc. Co.*, 819 F.3d 1136 (9th Cir. 2016).

13 54. Plaintiff's injuries must be both "concrete" and "particularized" in
 14 order to satisfy the requirements of Article III of the Constitution. (*Id.*)

15 55. For an injury to be concrete it must be a de facto injury, meaning it
 16 actually exists. In the present case, Plaintiff took the affirmative step of enrolling
 17 himself on the National Do-Not-Call Registry for the purpose of preventing
 18 marketing calls to their telephones. Such telemarketing calls are a nuisance, an
 19 invasion of privacy, and an expense to Plaintiff. *See Soppet v. enhanced Recovery*
 20 *Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012). All three of these injuries are present
 21 in this case. (See also *Chen v. Allstate Inc. Co.*, 819 F.3d 1136 (9th Cir. 2016).)

22 56. Furthermore, the Third Circuit recently stated, Congress found that
 23 "[u]nsolicited telemarketing phone calls or text messages, by their nature, invade
 24 the privacy and disturb the solitude of their recipients," *Van Patten*, 847 F.3d at
 25 1043, and sought to protect the same interests implicated in the traditional
 26 common law cause of action. Put differently, Congress was not inventing a new
 27 theory of injury when it enacted the TCPA. Rather, it elevated a harm that, while
 28 "previously inadequate in law," was of the same character of previously existing

1 “legally cognizable injuries.” *Spokeo*, 136 S.Ct. at 1549. *Spokeo* addressed, and
2 approved, such a choice by Congress. *Susinno v. Work Out World Inc.*, No. 16-
3 3277, 2017 WL 2925432, at *4 (3d Cir. July 10, 2017).

4 57. For an injury to be particularized means that the injury must affect
5 the plaintiff in a personal and individual way. *See Spokeo* at 7. Furthermore,
6 Plaintiff is the person who pays for the phone, and are the regular carrier and user
7 of the phone. All of these injuries are particular to Plaintiff.

8 **B. TRACEABLE TO THE CONDUCT OF DEFENDANT**

9 58. Plaintiffs must allege at the pleading stage of the case facts to show
10 that their injury is traceable to the conduct of Defendant. In this case, Plaintiff
11 satisfies this requirement by alleging that Defendant, and/or agents of Defendant
12 on behalf of Defendant, placed illegal text messages to Plaintiff’s phone.

13 59. In the instant case, Defendant placed text messages to Plaintiff’s
14 wireless/cellular phone.

15 **C. INJURY LIKELY TO BE REDRESSED BY A FAVORABLE JUDICIAL OPINION**

16 60. The third prong to establish standing at the pleadings phase requires
17 Plaintiffs to allege facts to show that the injury is likely to be redressed by a
18 favorable judicial opinion. In the present case, Plaintiff’s Prayers for Relief
19 include a request for damages for each text made by Defendant, as authorized by
20 statute in 47 U.S.C. § 227. The statutory damages were set by Congress and
21 specifically redress the financial damages suffered by Plaintiff and the members
22 of the putative class. Furthermore, Plaintiff’s Prayers for Relief request injunctive
23 relief to restrain Defendant from the alleged abusive practices in the future. The
24 award of monetary damages and the order for injunctive relief redress the injuries
25 of the past, and prevent further injury in the future.

26 61. Because all standing requirements of Article III of the U.S.
27 Constitution have been met, as laid out in *Spokeo, Inc. v. Robins*, 578 U.S. ____
28 (2016) and in the context of a TCPA claim, as explained by the Ninth Circuit in

1 *Chen v. Allstate Inc. Co.*, 819 F.3d 1136 (9th Cir. 2016), Plaintiff has standing to
 2 sue Defendant on the stated claims.

3 **CLASS ACTION ALLEGATIONS**

4 **A. CLASS ALLEGATIONS**

5 62. Plaintiff brings this action pursuant to Federal Rule of Civil
 6 Procedure 23(a), (b)(2), and (b)(3) on behalf of himself and the following class
 7 defined as follows (the “Class”):

8 **“Text Class”**: All individuals within the United States, who
 9 within four years prior to the filing of the initial Complaint in
 10 this action, were sent a text message, from Defendants or
 11 anyone on Defendants’ behalf, to said person’s cellular
 telephone number, for the purposes of promoting Defendants’
 service, without their prior express written consent.

12 63. The following individuals are excluded from the Class: (1) any Judge
 13 or Magistrate presiding over this action and members of their families; (2)
 14 Defendants, Defendants’ subsidiaries, parents, successors, predecessors, and any
 15 entity in which Defendants or their parents have a controlling interest, and its
 16 current or former employees, officers, and directors; (3) Plaintiff’s counsel and
 17 Defendants’ counsel; (4) persons who properly execute and file a timely request
 18 for exclusion from the Class; (5) the legal representatives, successors or assigns of
 19 any such excluded persons; (6) persons whose claims against Defendants have
 20 been fully and finally adjudicated and/or released; and (7) individuals for whom
 21 Defendants have record of consent to place telemarketing calls.

22 64. This suit seeks only damages, statutory penalties, and injunctive
 23 relief for recovery of economic injury on behalf of the Class, and it expressly is
 24 not intended to request any recovery for personal injury and claims related
 25 thereto.

26 65. Plaintiff reserves the right to expand the Class definition to seek
 27 recovery on behalf of additional persons as warranted as facts are learned in
 28 further investigation and discovery.

1 66. Plaintiff and members of the Class were harmed by Defendant's acts
2 in at least the following ways: Defendant, either directly or through agents,
3 illegally contacted Plaintiff and the Class members *via* their telephones, after
4 Plaintiff and the Class members took the affirmative step of registering their
5 numbers on the DNC, and/or contacted Plaintiff and members of the Class using a
6 pre-recorded voice for telemarketing purposes without first obtaining prior
7 consent.

8 **B. NUMEROSITY**

9 67. The exact sizes of the Class is unknown and not available to Plaintiff
10 at this time, but it is clear individual joinder is impracticable.

11 68. On information and belief, Defendants made text messages to
12 thousands of consumers who fall into the definition of the Class. Members of the
13 Class can be easily identified through Defendants' records.

14 **C. COMMONALITY AND PREDOMINANCE**

15 69. There are many questions of law and fact common to the claims of
16 Plaintiff and the Class, and those questions predominate over any questions that
17 may affect individual members of the Class.

18 70. Common questions for the Class include, but are not necessarily
19 limited to the following:

- 20 (a) Whether Defendants' conduct violated the TCPA;
- 21 (b) Whether Defendants systematically made text messages to
22 consumers who did not previously provide Defendant and/or
23 their agents with prior express written consent to receive such
24 messages after July 5, 2018;
- 25 (c) Whether members of the Classes are entitled to up to three
26 times actual monetary loss based on the willfulness of
27 Defendants' conduct; and
- 28 (d) Whether Defendants and their agents should be enjoined from
engaging in such conduct in the future.

1 71. The common questions in this case are capable of having common
2 answers. If Plaintiff's claim that Defendant routinely violates the TCPA is correct,
3 Plaintiff and the Class members will have identical claims capable of being
4 efficiently adjudicated and administered in this case.

5 **D. TYPICALITY**

6 72. Plaintiff's claims are typical of the claims of the other members of
7 the Classes.

8 73. Plaintiff and the Class sustained damages as a result of Defendants'
9 uniform wrongful conduct during transactions with Plaintiff and the Classes.

10 **E. ADEQUATE REPRESENTATION**

11 74. Plaintiff will fairly and adequately represent and protect the interests
12 of the Class, and has retained counsel competent and experienced in complex
13 class actions.

14 75. Plaintiff has no interest antagonistic to those of the Defendants and
15 their agents, and Defendants have no defenses unique to Plaintiff.

16 **F. POLICIES GENERALLY APPLICABLE TO THE CLASS**

17 76. This class action is appropriate for certification because the
18 Defendants have acted or refused to act on grounds generally applicable to the
19 Classes as a whole, thereby requiring the Court's imposition of uniform relief to
20 ensure compatible standards of conduct toward the Classes members, and making
21 final injunctive relief appropriate with respect to the Classes as a whole.

22 77. Defendants' practices challenged herein apply to and affect the
23 Classes' members uniformly, and Plaintiff's challenge of those practices hinges
24 on Defendants' conduct with respect to the Classes as a whole, not on facts or law
25 applicable only to Plaintiff.

26 **G. SUPERIORITY**

27 78. This case is also appropriate for class certification because class
28 proceedings are superior to all other available methods for the fair and efficient

1 adjudication of this controversy given that joinder of all parties is impracticable.

2 79. The damages suffered by the individual members of the Classes will
3 likely be relatively small, especially given the burden and expense of individual
4 prosecution of the complex litigation necessitated by Defendants' actions.

5 80. Thus, it would be virtually impossible for the individual members of
6 the Classes to obtain effective relief from Defendants' misconduct.

7 81. Even if members of the Classes could sustain such individual
8 litigation, it would still not be preferable to a class action, because individual
9 litigation would increase the delay and expense to all parties due to the complex
10 legal and factual controversies presented in this Complaint.

11 82. By contrast, a class action presents far fewer management difficulties
12 and provides the benefits of single adjudication, economy of scale, and
13 comprehensive supervision by a single court. Economies of time, effort and
14 expense will be fostered, and uniformity of decisions ensured.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF TCPA, 47 U.S.C. § 227(B)**

17 **("Illegal Text Claim" on behalf of Plaintiff and the Text Class)**

18 83. Plaintiff re-alleges and incorporates by reference each preceding
19 paragraph as though set forth at length herein.

20 84. It is a violation of the TCPA to make "any call (other than a call
21 made for emergency purposes or made with the prior express consent of the called
22 party) using any automatic telephone dialing system or an artificial or prerecorded
23 voice...to any telephone number assigned to a...cellular telephone service..." 47
24 U.S.C. § 227(b)(1)(A)(iii).

25 85. "Automatic telephone dialing system" refers to any equipment that
26 has the "capacity to dial numbers without human intervention." *See, e.g., Hicks v.*
27 *Client Servs., Inc.*, No. 07-61822, 2009 WL 2365637, at *4 (S.D. Fla. June 9,
28 2009) (citing FCC, In re: Rules and Regulations Implementing the Telephone

1 Consumer Protection Act of 1991: Request of ACA International for Clarification
2 and Declaratory Ruling, 07–232, ¶ 12, n.23 (2007)).

3 86. Defendant – or third parties directed by Defendant – used equipment
4 having the capacity to dial numbers without human intervention to make non-
5 emergency text messages to the cellular telephones of Plaintiff and the other
6 members of the Text Class.

7 87. These calls were made without regard to whether Defendant had first
8 obtained express written consent to make such calls. In fact, Defendants did not
9 have prior express written consent to call the cell phones of Plaintiff and Text
10 Class Members when the subject calls were made.

11 88. Defendant violated § 227(b)(1)(A)(iii) of the TCPA by using an
12 automatic telephone dialing system to make non-emergency text messages to the
13 cell phones of Plaintiff and the other members of the putative Class without their
14 prior express consent.

15 89. As a result of Defendant’s conduct, and pursuant to § 227(b)(3) of
16 the TCPA, Plaintiff and the other members of the putative Class were harmed and
17 are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff
18 and the class are also entitled to an injunction against future calls.

19 90. To the extent Defendants’ misconduct is determined to be willful and
20 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), award up to three
21 times the amount of statutory damages recoverable by the members of the Class.

22 **ATTORNEY’S FEES**

23 91. Each and every allegation contained in the foregoing paragraphs is
24 re-alleged as if fully rewritten herein.

25 92. Plaintiff is entitled to recover reasonable attorney fees under Rule 23
26 of the Federal Rules of Civil Procedure, California law, and requests the
27 attorneys’ fees be awarded.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- (a) An order certifying the Text Class as defined above, appointing Plaintiff as the representative of the Class, and appointing his counsel, Kristensen Weisberg, LLP as lead Class Counsel;
- (b) An order certifying the DNC Class as defined above, appointing Plaintiff as the representative of the Class, and appointing his counsel, Kristensen Weisberg, LLP as lead Class Counsel;
- (c) An award of actual and statutory damages for each and every violation to each member of the Class pursuant to 47 U.S.C. § 227(b)(3)(B);
- (d) An award of actual and statutory damages for each and every knowing and/or willful violation to each member of the Class pursuant to 47 U.S.C § 227(b)(3)(B);
- (e) An injunction requiring Defendant and Defendant's agents to cease all unsolicited telephone calling activities, and otherwise protecting the interests of the Class, pursuant to 47 U.S.C. § 227(b)(3)(A);
- (f) Pre-judgment and post-judgment interest on monetary relief;
- (g) An award of reasonable attorneys' fees and court costs; and

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(h) All other and further relief as the Court deems necessary, just,
and proper.

Dated: July 10, 2018

Respectfully submitted,

By: /s/ John P. Kristensen

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all such triable claims.

Dated: July 10, 2018

Respectfully submitted,

By: /s/ John P. Kristensen

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